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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,255	01/09/2001	Richard N. Spann	RNS-001	6555

21323 7590 03/20/2002

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/20/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/757,255

Applicant(s)

SPANN, RICHARD N.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restriction*

Applicant's election of Figures 1, 2, and 3A (Species I) in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Accordingly, claims 8-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### *Drawings*

The substitute formal drawings were received on April 3, 2001. These drawings are approved.

### *Specification*

The disclosure is objected to because of the following informalities:

On page 1, line 3, --filed January 14, 2000,-- should be inserted before "the disclosure".

On page 6, line 24, (and all occurrences on page 7), "14" should be changed to --14a, 14b--.

On page 14, lines 7, 8, and 10, "144" should be changed to --144a, 144b--.

On page 15, lines 4, 5, and 7, "244" should be changed to --244a, 244b--.

Appropriate correction is required.

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### *Claim Objections*

Claim 1 is objected to in line 2, it is suggested that --thereby-- be inserted before "forming". Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7, and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Pushee '631.

Pushee '631 discloses a holder for elongated members (17) whereby the holder comprises first (15) and second (11) generally parallel (in the vertical direction) rails defining crossbars that are vertically (left to right in Figure 2) and horizontally offset (top to bottom in Figure 2) from one another thereby forming an opening (see Figure 2) whereby the elongated members (17) are received and supported in a *generally* vertical orientation; the rails (11 and 15) have *generally* opposed edges, i.e., top edges of each rail, for contacting the member (17) when inserted therein; rail (15) comprises at least two depressions (15a and 15b) formed *along* the opposed edge; and the holder further comprises two end plates (4) attached to side edges (see Figure 1) of the crossbars whereby a footprint is formed between the end plates and the center of gravity of the elongated member (17) lies within the footprint (see Figure 2). Pushee' 631 is considered to disclose the structure capable of performing the method steps of providing rails vertically and

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horizontally offset from one another, forming at least two depressions on the edge of a rail and inserting an elongated member between the rails so that the member is held by the depression a generally vertical orientation.

Claims 1-5 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Emery '673.

Emery '673 discloses a holder for elongated members (6) whereby the holder comprises first (30) and second (5) generally parallel (in the horizontal direction - see Figure 3) rails defining crossbars that are vertically (middle to right in Figure 3) and horizontally offset (top to bottom in Figure 3) from one another thereby forming an opening (see Figure 3) whereby the elongated members (6) are received and supported in a *generally* vertical orientation; and the rails (30 and 5) have *generally* opposed edges for contacting the member (6) when inserted therein; each of the rails (30 and 5) comprise at least two depressions (32 and 16, respectively) formed *along* the opposed edge thereby restricting movement of the member (6). Emery '673 is considered to disclose the structure capable of performing the method steps of providing rails vertically and horizontally offset from one another, forming at least two depressions on the edge of each of the rails and inserting an elongated member between the rails so that the member is held by the depressions a generally vertical orientation.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rosenberg '081 show an article holder that comprises vertically and horizontally

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offset opposed rails having depressions whereby elongated members are held in a substantial horizontal manner therein. Kirkham, Eidsmoe *et al.*, and Arroyo *et al.* show various holders.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872.

The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

Jennifer E. Novosad/jen  
March 14, 2002



DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600